

§ 21.33

(2) Rejects the grant as made and explains the reasons why the application should be granted as originally requested; and

(3) Returns the instrument of authorization.

(e) The Commission will designate an application for a formal hearing, specifying with particularity the matters and things in issue, if, upon consideration of the application, any pleadings or objections filed, or other matters which may be officially noticed, the Commission determines that:

(1) A substantial and material question of fact is presented;

(2) The Commission is unable for any reason to make the findings specified in paragraph (a) of this section and the application is acceptable for filing, complete, and in accordance with the Commission's rules, regulations, and other requirements.

(3) The application is entitled to comparative consideration (under § 21.31) with another application (or applications); or

(4) The application is entitled to comparative consideration (pursuant to § 21.31) and the applicants have chosen the comparative evaluation procedure of § 21.35 but the Commission deems such procedure to be inappropriate.

(f) The Commission may grant, deny, or take other action with respect to an application designated for a formal hearing pursuant to paragraph (e) of this section or part 1 of this chapter.

(g) Whenever the public interest would be served thereby the Commission may grant one or more mutually exclusive applications expressly conditioned upon final action on the applications, and then either conduct a random selection process (in specified services under this rules part), designate all of the mutually exclusive applications for a formal evidentiary hearing or (whenever so requested) follow the comparative evaluation procedures of § 21.35, as appropriate, if it appears:

(1) That some or all of the applications were not filed in good faith, but were filed for the purpose of delaying or hindering the grant of another application;

(2) That the public interest requires the prompt establishment of radio

47 CFR Ch. I (10–1–04 Edition)

service in a particular community or area;

(3) That a delay in making a grant to any applicant until after the conclusion of a hearing or a random selection proceeding on all applications might jeopardize the rights of the United States under the provision of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, other statutes, or of the provisions of this chapter.

(h) Reconsideration or review of any final action taken by the Commission will be in accordance with subpart A of part 1 of this chapter.

[44 FR 60534, Oct. 19, 1979, as amended at 50 FR 5993, Feb. 13, 1985]

§ 21.33 Grants by random selection.

(a) If an application for an authorization for a Multichannel Multipoint Distribution Service (MMDS) station or for a Multipoint Distribution Service (MDS) H-channel station is mutually exclusive with another such application, and satisfies the requirements of §§ 21.31 and 21.914, the applicant may be included in the random selection process set forth in §§ 1.821, 1.822 and 1.824 of this chapter.

(b) Renewal applications shall not be included in a random selection process.

(c) If Multipoint Distribution Service applicants enter into settlements, the applicants in the settlement must be represented by one application only and will not receive the cumulative number of chances in the random selection process that the individual applicants would have had if no settlement had been reached.

[58 FR 11798, Mar. 1, 1993, as amended at 61 FR 26674, May 28, 1996]

§ 21.34 [Reserved]

§ 21.35 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where the competitive bidding process or random